

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP NO. 10402 of 2016(O&M)
Date of Decision: 19.12.2019**

Rajinder Kumar & Ors. ... Petitioners

versus

State of Punjab & Ors. ... Respondents

with CWP NO. 23215 of 2016(O&M)

Anil Kumar ... Petitioner

versus

State of Punjab & Ors. ... Respondents

and CWP NO. 23332 of 2016(O&M)

Navdeep Kumar ... Petitioner

versus

State of Punjab & Ors. ... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Argued by :Mr.R.K. Arora, Advocate
for the petitioners.**

Ms. Monica Chhibbar Sharma, Sr. DAG Punjab

**Mr. Nitin Kaushal, Advocate
for respondent No.3.**

**Mr. K.S. Dadwal, Advocate
for respondents No.3 to 13.**

**Mr. Mohit Jaggi, Advocate
for respondent No.4.**

**Ms. Jasvir Kaur, Advocate for
respondent No.3 in CWP-23232 of 2016.**

ARUN MONGA, J.

1. The question herein that arises, *inter alia*, for adjudication by this Court in the above-referred three writ petitions is, whether the seniority of different feeder cadre posts for the purpose of promotion to the post of Sanitary Inspectors is to be maintained as per Rule 11 of the Punjab Municipal Services(Recruitment and Conditions of Services) Rules, 1975 (for brevity, 1975 Rules) or as per Memo dated 12.08.1994(Annexure P-1) issued by the Director Local Government, Government of Punjab. Since common question of law and facts is involved, I propose to dispose of all the three writ petitions by this common order passed in CWP No. 10402 of 2016.

2. At the time of issuance of notice, my learned Senior Brother Rajiv Narain Raina, J. passed the following order 24.05.2016, which summed up the case:-

“Draws attention to Appendix B (Rule 4 and Sub Rule 2 of Rule 5) of the Punjab Municipal Services (Recruitment & Conditions of Service) Rules, 1975 which prescribes qualifications for promotion to the post of Sanitary Inspectors from amongst feeder municipal employees who possess Sanitary Inspector's Certificate. As per note to memo dated 12.8.1993, seniority list had to be prepared on the basis of date of passing of Sanitary Inspector's Certificate [on successful completion of course/diploma as stated by Mr. Arora]. It is prescribed that seniority prepared in this manner was only for purposes of consideration for promotion to the post of Sanitary Inspectors and not for others. Mr. Arora submits that there are several categories of posts including Clerks, Junior Assistants, Sanitary Supervisors, Peons, Malis etc., who form a joint cadre with a common seniority list maintained. The consideration for promotion are only for those who hold the Certificate, and

therefore, theoretically speaking there are virtually two seniority lists; one for the purposes of joint administration while the other for purposes of promotion to the post of Sanitary Inspectors based on earning qualification. The position remained as per note of the Circular of 12.8.1993 (Annex. P-1) till the issuance of memo dated 24.12.2015 (Annex. P-2) coming from the office of the Director of Local Government, Punjab. Henceforth, all persons have been made eligible for consideration for promotion to the post of Sanitary Inspectors based on length of service. Mr. Arora argues that though instructions fill gaps but cannot supplant rules and only supplement them. The instructions according to him fly in the face of the Appendix B of the Rules and rewrite it, which is impermissible without amending the rules. The seniority has been finalized by Annex P-9. Besides the challenge to the final seniority list on the above reasoning, the grievance is also that objections filed by the petitioners [Annex P-4 to P-8] have not been dealt with by any meaningful reasoning, nor conveyed to them though they were offered the lip service of hearing before the impugned seniority list was published.”

3. In the aforesaid background, brief factual narrative first.
4. Petitioners herein are Municipal employees working on Class-III and IV posts such as Clerks, Junior Assistants, Helpers, Mali-cum-Chowkidar, Electricians, Daftris, Record Lifters, Beldars, Mates etc. They all become eligible for being considered for promotion to the post of Sanitary Inspector subject to fulfillment of their eligibility i.e. on the basis of date of passing of the prescribed qualifications under the Rules. No feeder cadre has been specified for promotion to the post of Sanitary Inspectors. All Municipal employees irrespective of their lower posts, cadre, class or group are, thus, eligible for consideration of their claim for said promotion, provided they hold Sanitary Inspector Certificate from any

recognized institutions/ University. The Government took a decision vide memo dated 12.08.1994 to prepare a common seniority list of eligible candidates on the basis of date of passing of Sanitary Inspector Certificate course.

5. In the memo dated 12.08.1994 following 'note' was provided:-

“This seniority list has been prepared on the basis of date of passing of Sanitary Inspector's Certificate and this seniority is admissible only for the purpose of consideration for promotion to the post of Sanitary Inspectors. The seniority of the employees shown in this list in the cadre of Clerk/ Peon etc. will remain same as it was earlier,”

6. The seniority list was finalized in the year 1994 in view of the above. Thereafter, different feeder cadre employees (irrespective of their designation) were being added in the said list from the dates their attaining requisite qualification/ date of eligibility (Sanitary Inspector Certificate). The said seniority list was only meant for the purpose of consideration of promotion to the rank of Sanitary Inspector after attaining the said requisite qualification.

7. The above procedure regarding determination of eligibility for promotion from the feeder cadres on the basis of the date of acquiring eligibility/ qualification was followed continuously from the year 1994 onwards. However, on 24.12.2015 the respondent No.2 issued tentative seniority(Annexure P-2) assigning seniority on the basis of length of service of the eligible employees of different feeder cadres irrespective of the dates of their attaining the eligibility (Diploma of Sanitary Inspector) for promotion to the post of Sanitary Inspector.

8. The petitioners filed objections (Annexures P-4 to P-8), but without considering the same and without passing any order thereupon, the

impugned final seniority list(Annexure P-9) was issued on 17.05.2016. While preparing final seniority list, certain more persons were added therein who acquired eligibility/ qualifications in between the period of circulation of tentative seniority list and final seniority list. Petitioners had acquired eligibility qualification much prior to the private respondents but have not been considered for promotion as Sanitary Inspector despite availability of posts from the year 2012 onwards and now they are being further ignored for promotion by down grading them in the said list by preparing the same on the basis of length of service in the feeder cadres by ignoring the date of their having attained the qualification/ eligibility (Diploma of Sanitary Inspector) to be considered for promotion to the post of Sanitary Inspectors.

9. The petitioners had attained the Diploma of Sanitary Inspector prior to the private respondents, notwithstanding, the petitioners have been made junior to those who acquired the eligibility qualifications after them. Hence, the writ petition.

10. In the return filed on behalf of respondents, the claim of petitioners has been resisted on the ground that seniority has been rightly assigned on the basis of length of service as per the letter of decision dated 02.06.2004 (Annexure P-10) taken by the Government. As regards the private respondents, they contested the claim of the petitioners on the ground that Rule 11 of 1975 Rules *ibid* provide for determination of seniority from the date of continuous appointment of a post in the feeder cadres. Accordingly, the Department has rightly prepared the seniority list and no interference is called for by this Court.

11. I have heard the rival contentions of learned counsel for the parties and perused the pleadings along with the relevant record appended

thereto.

12. It would be apposite to reproduce the relevant rules viz. Rule 4 and Appendix B and Rule 5 of 1975 Rules governing the appointment to the post of Sanitary Inspectors vis-a-vis Rule 11 relied upon by the private respondents.

“4. Qualifications. -

The qualifications necessary for direct recruitment and for promotion to the posts in a service shall be detailed in Appendix ‘B’ against that Service.

Rule 5 Method of recruitment. -

(1) Recruitment to various categories of posts in a Service at the time of its initial consideration shall be made by the appointment authority by absorption of persons already in the service of a Municipal Committee in a corresponding post in appropriate category at the time of the constitution of the Service : provided that they are found fit by an Authority appointed by the Government in this behalf for becoming member of the Service after taking into consideration their qualifications and service record.

2. After filling in the vacancies under sub-rule (1), the remaining vacancies and the vacancies which may occur thereafter shall be filled up in the following manner:-

(i) fifty per cent by direct recruitment; and

(ii) fifty per cent by promotion on seniority-cum-merit basis:

Provided that if no suitable candidate is available for appointment by direct recruitment or by promotion the vacancy may be filled up by transfer or on deputation :

Provided further that if no qualifications have been specified in the Appendix ‘B’ for the purposes of filling up the same by promotion, that post shall be filled up by the direct recruitment.

Appendix B
(Rule 4 and Sub Rule 2 of Rule 5)

Sr.No.	Name of post	Qualifications for direct recruitment	Qualifications for promotion
1 to 22	XXX	XXX	XXX
23	Sanitary Inspectors	Sanitary Inspectors Certificate	Should be a municipal employee possessing Sanitary Inspector's Certificate.

Rule 11. Seniority of Members of Service:-

The seniority inter se of the members of a service shall be determined separately, for every category within a Service from the dates of their continuous appointment to a post in the said category:

Provided that in the case of members appointed by direct recruitment their inter se seniority shall be in the order of merit in which they have been placed by the Selection Committee.

Provided further that in the case of two or more members appointed on the same date, a member appointed by direct recruitment shall be senior to a member appointed otherwise.”

A perusal of the above rules would reveal that for filling up posts of Sanitary Inspectors, neither the feeder cadre post nor any share of any of the cadres have been defined. A municipal employee borne on the feeder cadre irrespective of designation, post, class or group i.e. Clerks, Junior Assistants, Electrician, Helpers, Mali-cum-Chowkidars, Daftari, Record Lifters, Beldars, Sweepers, Mates etc. are eligible for consideration of the said promotion, provided, the candidates possess a Sanitary Inspector's Certificate from any recognized institution/ University. Notably, all feeder cadres posts are also governed by different set of departmental rules for respective posts and also have alternative channel of promotion in their service rules.

13. Illustratively, Sweepers are governed by their own rules i.e. Punjab Municipal Safai Karamchari Rules, 1984. Likewise, other Class IV employees are governed by Punjab Municipal Employees (Class IV Service)

Rules, 1986. Safai Karamcharis are entitled to promotion to Sanitary Mate/ Sanitary Jamadar in accordance with 1984 Rules *ibid*, on the other hand, Class IV employees are entitled for promotion to the post of Clerk/ Class III in accordance with 1986 Rules *ibid*. Similarly, Clerical staff is entitled for promotion to the post of Senior Assistant as per Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.

14. Perusal of Rule 11 of 1975 Rules *ibid* would reveal that the applicability thereof is confined only to the members as defined in Rule 2 (k), wherein member means a member of service detailed in Appendix A.

Appendix A is reproduced hereinbelow:-

APPENDIX 'A

SR. No.	Name of Service	Class of municipal committee	Pay Scale
1	Punjab Municipal Service of Executive Officers	I II III	Rs. 600-30-900/40-1,100 Rs. 500-30-740/40-900 Rs. 400-25-550/30-700
2	Punjab Municipal Service of Secretaries	I II and III	Rs. 500-30-740/40-900 Rs. 400-25-550/30-700
3	Punjab Municipal Service of Assistant Secretaries	I	Rs. 400-25-550/30- 700
4	Punjab Municipal Service of Medical Officers of Health	All Classes	Grade I Rs. 900—50—1,350 Grade II Rs. 400-30-700/40-1,100
4-A	Punjab Municipal Service of Superintending Engineers (Civil)	Classes I, II and III	Rs. 14300-400-15600-450-18600
5	Punjab Municipal Service of Engineers	All Classes	Grade I Rs. 800-50- 1,300/50-1,600 Grade II Rs. 400-30-700/40-1,100
6	Punjab Municipal Service of Assistant Municipal Engineers	All Classes	400-30-700/40-1,100
7	Punjab Municipal Service of Town Planners	All Classes	Rs. 800-50- 1,300/50-1,600
8	Punjab Municipal Services of Assistant Town Planners	All Classes	Rs. 400-30-700/40-1,100
9	Punjab Municipal Service of Planning Assistants	All Classes	Rs. 300-25- 600

SR. No.	Name of Service	Class of municipal committee	Pay Scale
10	Punjab Municipal Service of Architects	All Classes	Rs. 800-50-1,300/50-1,600
11	Punjab Municipal Service of Assistant Architects	All Classes	Rs. 400-30-700/40-1,100
12	Punjab Municipal Service of Law Officers	All Classes	Rs. 500-30-590/30-830/35-900
13	Punjab Municipal Service of Assistant Divisional Fire Officers	All Classes	Rs. 400-25-500/30-650
14	Punjab Municipal Service of Legal Assistants	All Classes	Rs. 300-25- 500/25-600
15	Punjab Municipal Service of Fire Station Officers	All Classes	Rs. 300-25-500/25-600
16	Punjab Municipal Service of Architectural Assistants	All Classes	Rs. 300-25-500/25-600
17	Punjab Municipal Service of Superintendents	All Classes	Rs. 300-25- 500/25-600
18	Punjab Municipal Service of Head Draftsmen	All Classes	Rs. 450-25-500
19	Punjab Municipal Service of Accountants	I II and III	Rs. 300-25-500/25-600 Rs. 200-10-280/15-430/20-450
20	Punjab Municipal Service of Draftsman	All Classes	Rs. 200-10-280/15- 430/20-450
21	Punjab Municipal Service of Sectional Officers	All Classes	Rs. 200-10- 280/15-430/20-450
22	Punjab Municipal Service of Assistant Superintendents	All Classes	Rs. 225-15-360/20-500
23	Punjab Municipal Service of Assistants/Inspectors/Head Clerks	All Classes	Rs. 160-10-280/15-400
24	Punjab Municipal Service of Stenographers	All Classes	Rs. 160-10-280/15-400
25	Punjab Municipal Service of Chief Sanitary Inspectors	All Classes	Rs. 160-10-280/15-400 plus Rs. 50 as Special Pay
26	Punjab Municipal Service of Sanitary Inspectors	All Classes	Rs. 160-10-280/15-400

15. Ready together Rules and 2(k) and Appendix A of 1975 Rules *ibid* leaves no manner of doubt that the same apply only to the 5 services named in Appendix A. Post of Sanitary Inspectors is not mentioned in Appendix 'A' *ibid*. Further Member, as defined in Rule 2(k) does not seem to include an employee of the feeder cadre post. The petitioners being not

members of any of the services named in Rule 2(k) *ibid* or of their feeder services, therefore, are not governed by Rule 11. To that extent reliance of private respondents on the said rule is totally misplaced.

16. I am of the opinion that Department was, therefore, rightly preparing two seniority lists, as was required, one for the purpose of joint administration/ promotion to the next rank within the cadre and the other for the purpose of promotion to the post of Sanitary Inspector on basis of date of earning requisite qualifications. The same was being done in terms of Memo dated 12.08.1994 as the rules were silent in this aspect. The said memo was rightly issued by the Directorate of Local Government in order to avoid any heart burning amongst the common cadre employees.

17. Somewhat similar controversy arose before this Court in CWP No. 4856 of 2011, though in the matter of Punjab Roadways, where there are two separate cadres who are eligible for promotion without providing separate share of promotion in the said cadres as is the case herein where promotion is being made from different cadres without providing any share of any cadre. While deciding the said writ petition, speaking for this Court my Senior Brother Augustine George Masih, J. observed as below:-

“A perusal of the above would show that the eligibility for promotion to the post of Senior Assistant and that too in the 75% quota is different as far as the two separate cadres are concerned. For a Junior Assistant, the eligibility prescribed is of having an experience of working as such for a minimum period of one year whereas for the Junior Scale Stenographer, it has to be an experience of working as such for a minimum period of five years. Admittedly, there is no separate share determined for these two sources/feeder cadres for promotion to the post of Senior Assistant. If that be so, for the purpose of determining the eligibility when the criteria is seniority-cum-

merit, a common seniority for consideration for promotion to the post of Senior Assistant has to be maintained, which would obviously be from the date a candidate from a particular cadre becomes eligible for consideration for promotion.

Petitioner, who was initially appointed as a Steno Typist on 19.7.1975, was promoted as a Junior Scale Stenographer on 2.3.1988. For her to be eligible for promotion to the post of Senior Assistant, 5 years' experience on the post of a Junior Scale Stenographer was required which she completed on 2.3.1993. On this date, she was conferred with the right for consideration for promotion to the post of Senior Assistant. Respondents No.3 to 14 on the other hand, joined as Clerks on various dates and were designated as Junior Assistants on 1.1.1996, details whereof have been given in para 4 of the writ petition. These respondents would become eligible for consideration for the post of Senior Assistant on completion of one year service as Junior Assistant i.e. 1.1.1997. Petitioner, thus, having become eligible for consideration for promotion to the post of Senior Assistant prior to the private respondents had to be placed higher in the common seniority list which was required to be maintained by the respondents in the light of the fact that there is no specified quota prescribed under the Statutory Rules or the instructions for the two sources from which the promotions could be made as the post on which the promotion has to be made is that of a Senior Assistant. In the absence of any specified quota from within the feeder cadre, the date of attaining eligibility for consideration for promotion has to be taken as the date for determining the seniority in the common seniority list which has to be maintained especially when promotion is based upon seniority-cum-merit basis. If that be so, the impugned orders dated 22.7.2010 (Annexure P-2) and the order dated 15.2.2011 (Annexure P-5) cannot sustain as the claim of the petitioner, who is senior to the respondents, cannot be over-looked for consideration for promotion to the post of Senior Assistant. It would not be out of

way to mention here that respondents No.3 to 14 have been duly served but they have chosen not to appear before the Court.

In the light of the above, the impugned orders dated 22.7.2010 (Annexure P-2) and the order dated 15.2.2011 (Annexure P-5) are hereby quashed. Petitioner is declared eligible for consideration for promotion to the post of Senior Assistant. Respondents are directed to prepare a common seniority list of the persons for the posts belonging to the feeder cadre on the basis of their attaining eligibility for consideration for promotion and thereafter shall proceed to pass appropriate orders promoting them as per the determined seniority within a period of two months from the date of receipt of certified copy of the order.”

18. The issue raised in the present case is squarely covered by the observations above. Apart from above, the determination of seniority on the basis of the date of acquiring eligibility was the settled position from the year 1994 onwards. It was rather inappropriate to unsettle the same after more than 20 years without there being any enactment of law for this. After such a long period the seniority could not have been reopened. The position in law is no more *res integra*. In this regard reference may be had to case titled **B.S. Bajwa & Anr. Vs. State of Punjab & Anr., 1998(2) SCC 523.**

19. There is another aspect of the matter which makes the case of the petitioners more curious. By the methodology of instructions dated 02.06.2004(Annexure P-10) the candidates who acquired the eligibility qualification later in time would gain seniority over those who had attained the eligibility qualifications earlier and vice versa. Thereby the candidates acquiring eligibility later would steal a march over candidates like the petitioners who had acquired eligibility earlier but were not promoted only

because of delay or inaction in filling of vacancies. It seems highly unfair, against common sense and logic and rather absurd that in considering candidates from the lower feeder service for promotion to higher post of Sanitary Inspector, the candidates who had acquired eligibility earlier in time should be given seniority below those who attained such eligibility later in time and from dates on which they were not in time and from dates on which they were not even eligible to be considered for promotion.

20. Notably, the seniority list has been revised on the basis of an order dated 02.06.2004(Annexure P-10) which was passed in compliance of a judgment rendered by this Court in CWP No. 1892 of 2004, in case titled Mohan Lal etc. Vs. State of Punjab. A perusal of the said order does not inspire confidence to the reasoning adopted by the respondents to disturb the seniority list qua the petitioners and private respondents herein. The said judgment and consequent office order dated 02.06.2004 was not passed in-rem, but was applicable and confined qua the Accountants working in the Department of Local Government in the State. The analogy adopted from order dated 02.06.2004 has been thus wrongly applied to the case herein. On that ground also, the impugned seniority list does not stand the scrutiny of law and is accordingly liable to be set aside.

21. As an upshot of my discussion above and the reasoning contained therein, writ petition is allowed. Seniority list circulated vide letter dated 17.05.2016 is not sustainable being contrary to the memo dated 12.08.1994. The said memo dated 12.08.1994, in any case, is not under challenge by any of the municipal employee and holds the fort till date. The impugned seniority list is quashed with a direction to the respondents to redraw the seniority in respect of feeder cadre posts for promotion to the

post of Sanitary Inspectors on the basis of dates of attaining eligibility by the employees of the feeder cadre for promotion to the post of Sanitary Inspector. Needful be done within a period of three months.

22. Writ petitions are allowed in above terms. However, no order as to costs.

(ARUN MONGA)
JUDGE

December 19, 2019
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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |